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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 POWERMAT TECHNOLOGIES, LTD.,

4 Plaintiff,

New York, N.Y.

5 v.

19 Civ. 878 (VSB)

6 BELKIN INTERNATIONAL INC.,

7 Defendant.

8 -----x

9 January 14, 2020
4:30 p.m.

10 Before:

11 HON. VERNON S. BRODERICK,

12 District Judge

13
14 APPEARANCES

15
16 MCKOOL SMITH, P.C.

Attorneys for Plaintiff

17 BY: NICHOLAS M. MATHEWS

18 O'MELVENY & MEYERS, LLP

19 Attorneys for Defendant

20 BY: BRAD M. ELIAS

21 BY: MATTHEW KLINE

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(Case called)

THE COURT: This is Judge Broderick. If you could repeat that? You cut out there.

MR. MATHEWS: Yes. This is Nick Mathews from McKool Smith representing Powermat. Hopefully you can hear me okay, your Honor.

THE COURT: Yes. Was there somebody else also with you?

MR. KLINE: It's Matt Kline from O'Melveny for Belkin, your Honor, but I'm having a hard time hearing everyone. I hope you can hear me okay.

THE COURT: I can hear you. So, right now we have Mr. Kline, Mr. Mathews. Is there anybody else on the line?

MR. ELIAS: Yes, your Honor. Brad Elias also from O'Melveny for Belkin as well.

THE COURT: Thank you.

So, we are here today for discovery dispute. I just ask that when counsel does speak if you could please identify yourself for the record. We are in my chambers, we have a court reporter here, so I just want to make sure that we have an accurate record.

So, I have the following documents in connection with today's conference. I have the order setting the revised discovery schedule which was document 77 from ECF. I have the parties' joint letter submitted on January 3rd. And then I

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1 have the redacted letter that was also submitted by the
2 parties, was filed on ECF and docketed as document 79.

3 Are there any other materials that I should have in
4 connection with today's conference? First I will hear from
5 plaintiff's counsel.

6 MR. MATHEWS: Nick Mathews for Powermat. Not from our
7 perspective, your Honor.

8 THE COURT: Okay.

9 From the defendant's perspective?

10 MR. KLINE: Matt Kline, your Honor. Those are the
11 right documents. Thank you.

12 THE COURT: So, the first item would I like to discuss
13 is the issue of the 30(b)(6) deposition and I guess my question
14 is the following. I don't believe that I have -- either
15 party -- any of the specific questions that the 30(b)(6)
16 deponent was unable to answer. Is that an accurate statement?

17 First I will hear from Mr. Mathews.

18 MR. MATHEWS: Yes, your Honor.

19 So, the 30(b)(6) witness is the Chief Financial
20 Officer of Powermat.

21 THE COURT: Yes.

22 MR. MATHEWS: And so he did answer a number of
23 questions related to the solvency of the company during the
24 relevant time period which was the issue that was in question
25 at the time. And so, from our perspective, he was able to

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1 answer those questions during the deposition. Now, there are
2 other aspects of the deposition where Belkin has said they wish
3 they had some more information but I don't think that the
4 conclusion regarding solvency was one of those issues.

5 THE COURT: Let me hear from either Mr. Kline or
6 Mr. Elias with regard to that.

7 MR. KLINE: Sure, your Honor. Mr. Elias took the
8 deposition so I am going to say something briefly and then if
9 Mr. Elias wants to augment it I advise him to do so. And, I
10 apologize, he is in the New York office and I am in Los Angeles
11 so we can't be perfectly coordinated.

12 I think the main issue, your Honor, was we wanted the
13 audited financials to be able to test some of the claims their
14 CFO is making and when we were pressing him on some of the
15 details he consistently referred to, well, there would be
16 documents that say that. I can't provide you that information.
17 And then, when Mr. Elias pressed him on some of the issues he
18 said, you know, I just really didn't spend time reviewing
19 documents. I think he said something like he spent three
20 minutes on it preparing for some of the questions.

21 If Mr. Elias wants to augment that, with your
22 indulgence, your Honor, I invite minimum to do so.

23 THE COURT: Sure.

24 Go ahead, Mr. Elias.

25 MR. ELIAS: Thank you, your Honor.

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1 There were two primary parts to the 30(b)(6) topic.
2 Part of it was the solvency issue that you heard Mr. Mathews
3 address, and the second half of it was Powermat's financial
4 condition generally during this 2015 to 2017 time period that's
5 at issue. We are not disputing that we were able to get
6 information about the solvency question. Mr. Mathews is
7 correct that the witness did answer those questions and
8 provided that information. The problem we have is that he
9 wasn't able to answer the most basic questions about the
10 company's financial condition. Some of the examples are we
11 asked him whether the company had positive EBITDA; he did not
12 know. We asked him about the company's revenues; he did not
13 know. We asked him about the amount of time he had spent
14 preparing to answer those questions and his response was that
15 he had spent three minutes.

16 So, really what this is about is not the
17 solvency-related testimony, it is that we would like to get the
18 financial statements and then we would like to have an
19 opportunity to question him as a 30(b)(6) witness about those
20 statements.

21 THE COURT: Okay. Let me ask this. When you say the
22 financial statements, over what time period are you talking
23 about? What time period are you talking about?

24 MR. ELIAS: We have asked for the audited financial
25 statements for 2015, 2016, 2017.

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1 THE COURT: Okay. Well, let me ask the follow-up
2 question. I think, again, I think I actually have to see the
3 specific questions that the witness was unable to answer in
4 order to make an informed ruling with regard to this issue, as
5 well as, and I may already have this, but as well as the notice
6 of deposition that has the 30(b)(6) topics, and I think that
7 would assist me in actually making an ultimate ruling.

8 So, I would ask that the parties provide that to me.
9 To the extent that you believe that I should also, it probably
10 makes sense to provide me with the relevant pages of the
11 deposition so I can see exactly what the responses were related
12 to that so that I can more appropriately actually respond, make
13 a ruling on the 30(b)(6) issue.

14 MR. KLINE: This is Mr. Kline.

15 That makes sense and we appreciate that and we will
16 get you that this week, your Honor, and we will make sure to
17 run it by Mr. Mathews before we send it in.

18 THE COURT: That would be perfect. And obviously, to
19 the extent that you can agree on materials or agree to disagree
20 on certain materials, that's fine. But I would appreciate
21 that. It would just assist me in making that ruling.

22 So, as I understand it, with regard to the, there are
23 I think two basic other issues, I believe, one is relating to
24 the documents -- hold on for two seconds -- documents relating
25 to license disputes with other third-parties. As I understand

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1 it, certain documents have been turned over, specifically when
2 the plaintiff's negotiations resulted in a license, my
3 understanding is that the license was produced and that the
4 surrounding documents -- only the license was produced but not
5 the surrounding documents.

6 Is that an accurate statement?

7 MR. MATHEWS: Nick Mathews for Powermat. Your Honor,
8 that is a correct statement.

9 THE COURT: As well as I understand it, the argument
10 with regard to the financial condition, the argument was that
11 they would be irrelevant to the issue of a contract claim.

12 Is that also accurate?

13 MR. MATHEWS: Yes, your Honor. That is correct.

14 And that was Nick Mathews for Powermat.

15 THE COURT: Thank you.

16 So, let me hear briefly from defense counsel with
17 regard to each of those issues.

18 MR. KLINE: Yes, your Honor. This is Mr. Kline for
19 Belkin.

20 The disputes with third-parties on the license
21 agreements is really important. I think that for a moment
22 Powermat was taking the position in the case that they had one
23 standard agreement with these different licensees. I think
24 discovery and the deposition of their CEO and their other
25 witnesses has shown that they really didn't have one standard

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1 agreement. The agreement changed across different licenses
2 that they had set up and not only was there no standard
3 agreement, there were a number of disputes about the terms of
4 those license agreements. And so, for example, we know that
5 one dispute resulted in a settlement agreement with Samsung
6 that we would like to get our hands on as well as the documents
7 back and forth where the parties kind of took different
8 positions about how to read the contract.

9 I think most important among these other licensees is
10 a company called IDT, your Honor, that we have established that
11 in the parties' back and forth there is a deposition exhibit
12 that we can get to you and some related deposition testimony if
13 it was helpful where Powermat said to Belkin, hey, we are
14 having a hard time finalizing our deal between Powermat and
15 Belkin. If you want to, you guys can just rely on the IDT
16 license -- you being Belkin -- you can rely on the Powermat IDT
17 license.

18 As it turns out the Powermat IDT license has exactly
19 the contractual language that we think should be the
20 appropriate language in this case, it does not contain the few
21 words of mistake that we believe are contained in our contract
22 and we want to get the back and forth around that. And why
23 that is so important is that their CEO admitted in his
24 deposition with us that, yes, there were mistakes in the
25 document. He did not, to be clear, your Honor, admit that the

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1 mistake that we claim in the case is present but he admits
2 there is other mistakes like every page of the contract has the
3 number 5 at the bottom of it or there is red lining and other
4 strange headers and footers in the document.

5 We want to be able to show, through the back and forth
6 that Powermat had with IDT, Samsung, and a couple of other
7 parties, that our interpretation is a completely reasonable
8 one, as is our mistake defense.

9 I think that there has been a little bit of ships
10 passing in the night in some of the briefing with this. We
11 don't want their communications with any licensee ever about a
12 possible license. We really just want the kind of related
13 communications for folks where they reached a license agreement
14 and there was a dispute about the terms of that license
15 agreement because we think that those are really germane,
16 relevant documents to the issues in the case, and based on the
17 deposition admissions we got we don't think that there is any
18 significant burden in gathering these documents because, as the
19 CEO described it, yes, there are letters and e-mails back and
20 forth but we are not talking about mountains of evidence, just
21 a small amount.

22 So, that's the one item, your Honor. I think on the
23 relevance of the financial documents, I think we have
24 identified a couple and I think that, you know, the parties
25 have briefed that issue. One has to do with their bad or good

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1 faith in the way they've approached the contract. They cite a
2 North Carolina case that says that is not really relevant, we
3 have cited some Second Circuit cases that we say we think it is
4 relevant. There is the issue of -- the potential issue, we
5 haven't really pushed it hard in the case yet, about whether
6 they were solvent. And the CEO did admit during the deposition
7 that they were missing their debts as they were coming due but
8 it is an issue that's not fully explored on our end. And I
9 just think under the general relevance standards, if this case
10 were ever to go to a jury, we would want to show the general
11 financial condition of the company and why it was that after
12 many months of not coming after us for payments on this
13 chi-only standard, they really kind of, with the new CEO place
14 and the new economic pressures in the company, did pursue this
15 new strategy.

16 None of that is to prejudge any of those issues, your
17 Honor. You will hear very forcefully from Mr. Mathews that he
18 disagrees with those case themes and theories, but I think Rule
19 26 says this isn't the time to decide the merits of those
20 issues but if there is a plausible theory of relevance we
21 should get those documents.

22 In terms of any burdensomeness objection on the
23 financial documents, we think there is not really a good one
24 there because their CFO admitted, yes, they keep audited
25 financial records and those would be pretty easy to gather and

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1 produce to us.

2 THE COURT: Okay.

3 MR. KLINE: So, I hope I addressed the two categories
4 of documents, your Honor.

5 THE COURT: You did. Let me hear from plaintiff's
6 counsel with regard to these two issues, if you have anything
7 additional to add to the letters.

8 Go ahead.

9 MR. MATHEWS: Yes, I do, your Honor. Nick Mathews for
10 Powermat. And if I could take 30 seconds to kind of give an
11 overview of how we got here in terms of this discovery dispute
12 and what else we have already done to produce relevant
13 materials?

14 From our perspective, this is a clear license, there
15 is an integration clause, no parole evidence is relevant, but
16 we have been willing to move things along to trial and we have
17 spent tens of thousands of dollars gathering documents at
18 Belkin's request. This includes all the correspondence to and
19 from Powermat and Belkin. Before the contract was negotiated
20 and afterward, internal correspondence within Powermat
21 regarding the negotiation and performance of the license,
22 patent claim charts internal that we keep showing that we have
23 patents covering the standard, and the most recent request we
24 got from Belkin is, well, now we need all of your third-party
25 licenses even though we are looking at the intent of the

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1 parties in this contract and we agreed to that request too and
2 we produced those.

3 So, this next request for correspondence and back and
4 forth relating to these third-party contracts, we think, is
5 many steps removed from what is relevant in the case and it is
6 something that is significantly driving up our costs in terms
7 of discovery and we don't think it is proportional to the needs
8 of the case.

9 THE COURT: Okay. So, with regard to the first issue,
10 which as I understand it -- well, as I understand it, it is the
11 issue of licenses that had already been reached and then if
12 there was a dispute with regard to those licenses.

13 I agree that under Rule 26 and the definition of
14 relevance as it stands with regard to discovery, that there is
15 a theory under which those materials would be relevant.
16 Similarly, I find that with regard to the financial
17 documents -- again I am not, to be clear, I am not, by making
18 these rulings at all, A, indicating that the documents will
19 ultimately be relevant; or B, that even if I find that there is
20 some relevancy that the documents necessarily could even be
21 admissible. I am purely making a ruling that at this stage
22 they're discoverable.

23 So, with regard to the financial documents -- and
24 again, I don't know. I, too, think that those are relevant and
25 it may be that, as I indicated in the order, that in the

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1 resolution of the legal issues that are currently before me
2 that some of these documents may fall out. In other words,
3 while I understand that there is expense to the plaintiff to
4 produce these and I understand that -- but it may be that when
5 I do make the legal rulings that some of these will no longer
6 prove to be relevant. And I am not in any way sort of
7 pre-staging or giving you any idea about one way or the other
8 where I intend to come out but I am just indicating that I
9 understand the issues.

10 If, at the end of the day, once these documents were
11 produced, if there is a sense that plaintiff feels that these,
12 it was improper and/or that on the basis of proportionality
13 that there is an argument to be made that the defense should
14 bear some of the costs or related to these documents, I will
15 hear you at that time but at this stage I find that they are
16 sufficiently relevant under Rule 26 to necessitate their
17 production, again with the limitation, as I understand it, with
18 regard to when it comes to the licensing issue the only
19 documents that are being sought and that I am ruling on are the
20 documents as they relate to licenses that were entered into
21 where there had been a subsequent, I guess, dispute with regard
22 to those licenses and the back and forth that occurred related
23 to that.

24 And then, with regard to the 30(b)(6) issue, I am
25 going to reserve decision on that until I receive the materials

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1 from the parties relating to that.

2 Is there anything either that the parties don't
3 understand or things that you would seek clarification on at
4 this stage with regard to my ruling? From the plaintiff?

5 MR. MATHEWS: Not from Powermat. Nick Mathews for
6 Powermat. Nothing unclear from our perspective. Thank you
7 very much.

8 THE COURT: All right.

9 MR. KLINE: And Matt Kline for Belkin, your Honor;
10 same. We understand your ruling and we appreciate it and we
11 will work together with Mr. Mathews moving forward.

12 THE COURT: Okay. All right. Thank you very much,
13 counsel, for getting on the phone and I look forward to getting
14 the materials related to the 30(b)(6) issue. Assuming I don't
15 have any additional questions, what will follow from that once
16 I receive the materials is a ruling from me on that particular
17 issues. If I do have questions, I will issue an order asking
18 that we jump on the phone, I will try and issue in that order,
19 have other questions that I have so that the parties can be
20 prepared to respond to it and then we will resolve that issue
21 as expeditiously as possible so the parties can move forward.
22 Okay?

23 MR. KLINE: Matt Kline, your Honor. Thank you. And I
24 know Mr. Mathews and I both appreciate your willingness to jump
25 on the phone and have these calls.

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1 THE COURT: Sure.

2 MR. KLINE: Not every judge in the country does this
3 so we appreciate your time.

4 THE COURT: It is not a problem. Is there anything
5 else that we need to deal with today? From the plaintiff?

6 MR. MATHEWS: Nick Mathews for Powermat. No, your
7 Honor, and thank you for your time.

8 THE COURT: From the defense?

9 MR. KLINE: No, your Honor, have a good day. Thank
10 you very much.

11 THE COURT: Thank you very much. We will stand
12 adjourned.

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